IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2034 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GMM PFAUDLER LTD. - Petitioner(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

==========

Appearance :
MR NAYAN A SHETH with MR TANVISH U BHATT for Petitioner(s) : 1,
MR HASIT DAVE, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 6.
==========

CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 02/03/2006

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

The legal issues involved in this petition as well as in Special Civil Application No. 2033/04 are similar

and as the learned advocates appearing in both the matters are also common, at their request, both the petitions have been heard together.

2. All the legal issues involved in this petition have been decided in Special Civil Application No. 2033/04, and, therefore, they are not discussed again and only the facts, which are relevant for deciding this petition, have been stated hereinbelow.

3. In the instant case, the petitioner has been aggrieved by orders dated 30th & 31st January, 2004 made by respondent No. 5, Sales-tax Officer (1), Class-I, Unit 2, Anand, whereby benefits given to the petitioner under **"The Sales Tax Incentive Scheme for Wind Power Generation, 1993"** (hereinafter referred to as '**the Scheme**') have been withdrawn and by an order dated 12th February, 2004, the petitioner has been called upon to return the benefit, which it had availed under the aforesaid scheme.

4. In pursuance of the aforesaid scheme announced by the State, the petitioner industrial undertaking had set up wind farms for generation of electricity. The petitioner had installed 5 windmills at Lamba and 4

windmills at Bhogat in District Jamnagar. First 4 windmills at Lamba had been installed in 1994-95 and thereafter in the second phase of its project, 4 windmills had been instilled at Bhogat and one more windmill had been installed at Lamba. Thus, in all, 9 windmills had been installed by the petitioner in different wind farms and in respect of the said wind farms and the windmills, eligibility certificates had also been given to the petitioner to enable it to avail benefit in the nature of deferment of payment of sales tax.

5. After setting up the wind farm, the petitioner was regularly supplying electricity to Gujarat Energy Development Agency (GEDA) in accordance with conditions incorporated in the eligibility certificates dated 30.10.1995, 16.7.1996 and 14.6.1996 issued by respondent No. 3.

6. The petitioner had availed benefit under the scheme, whereby payment of sales tax, collected by the petitioner on sale of goods manufactured by it, to the government was deferred and the petitioner had to make payment to the government in six equal annual instalments.

7. A devastating cyclone which hit the coastal areas of Saurashtra on 9.06.1998, among other things, destroyed the wind farms set up by the petitioner. All the nine windmills erected by the petitioner had been substantially damaged and even the transmission lines, whereby electricity generated by the petitioner was supplied to GEDA, had also been adversely affected in such a manner that even if the windmills had not been damaged, the electricity generated at the wind farms of the petitioner could not have been transmitted to GEDA.

8. Because of the damage caused to the windmills, the petitioner could not generate electricity continuously for a period of 6 years as per condition incorporated in clause 7(f) of the Scheme and could not supply electricity to GEDA. The petitioner made all possible efforts to get the windmills repaired and ultimately got all the windmills repaired in February, 1999 and started generating electricity and also started supplying the same to GEDA. As per the case of the petitioner, even as on today, the said windmills are working satisfactorily and electricity generated by the said windmills is being supplied to GEDA as per the scheme though the period of 6 years as prescribed in clause 7(f) of the scheme is

over.

9. As the petitioner could not generate electricity continuously for a period of 6 years as per clause 7(f) of the scheme, under letter dated 18.12.2003 the petitioner was called upon to give certain information about the working of the windmills to respondent No. 5. The petitioner gave reply under its letter dated 23.12.2003 stating that due to the damage caused to the windmills by the cyclone, the windmills could not function from 9.7.1998 to 31.1.1999.

10. In view of the fact that clause 7(f) of the scheme had not been strictly followed by the petitioner, by virtue of the impugned orders passed by respondent No. 5, the petitioner has been called upon to pay Rs. 3,02,27,651/- including the amount of penalty and interest. Moreover, by the impugned order dated 12.2.2004, the bank account of the petitioner had also been attached by the authority.

11. As stated hereinabove, all the legal issues involved in this petition have already been discussed and decided in Special Civil Application No. 2033/04 and for reasons stated in the judgment dated 2.3.2006 passed therein,

without reiterating the principles propounded in the said judgment, we allow this petition because even in the instant case there was no deliberate default on the part of the petitioner but only on account of an Act of God or *vis majore*, the petitioner could not fulfill the conditions incorporated in clause 7(f) of the Scheme.

12. For the aforestated reasons, the impugned orders dated 30th and 31st January, 2004 made by respondent No. 5 and the consequential order dated 12th February, 2004, whereby bank account of the petitioner had been attached, are hereby quashed and set aside.

Rule is made absolute with no order as to costs.

(Anil R. Dave, J.)

(K.A. Puj, J.)

(hn)